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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAD EDWARD ESTIS,

Defendant and Appellant.

A123588

(San Mateo County
Super. Ct. No. SC065759)

Pursuant to a negotiated disposition, appellant Chad Edward Estis pleaded no contest as charged to robbery as a serious felony, conditioned on receiving a sentence of no more than six years if the alleged prior juvenile adjudication were valid and not to exceed three years if the prior were invalid or stricken. Over appellant's objection under *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*),¹ the court found the prior juvenile adjudication to be a true and valid strike. It sentenced appellant to a four-year state prison term (double the two-year lower term for robbery). Appellant challenges the use of the prior juvenile adjudication to enhance his sentence because he had no right to a jury trial in that earlier juvenile proceeding. We affirm.

¹ The high court in *Apprendi* ruled that due process, as well as the Sixth Amendment notice and jury trial guarantees, mandate that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi*, *supra*, 530 U.S. at pp. 476-477, 490.)

ANALYSIS

At the time of trial and briefing on appeal, this issue was pending before our Supreme Court in *People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*). Now decided, the court in *Nguyen* held that “the absence of a constitutional or statutory right to jury trial under the juvenile law does not, under *Apprendi*, preclude the use of a prior juvenile adjudication of criminal misconduct to enhance the maximum sentence for a subsequent adult felony offense by the same person.” (*Id.* at p. 1028.) The court first reasoned that the defendant’s claim did not come under the literal rule of *Apprendi* because that rule only requires that a jury in the *current* proceeding determine the existence of an alleged prior adjudication. (*Id.* at p. 1015.) Next, the court explained that prior juvenile adjudications substantially satisfy all the reasons why the court in *Apprendi* and related cases has concluded that prior convictions may be used to increase the maximum punishment for a subsequent adult offense without the need for jury findings in the later case. Like adult prior convictions, prior juvenile adjudications do not involve facts about the present offense that were withheld from a jury in the present case. Rather, they concern the defendant’s recidivism or status as a repeat offender, a basis on which courts acting without juries historically have imposed harsher sentences. Additionally, the prior criminal conduct comprising the recidivism was previously and reliably adjudicated in proceedings that included all the constitutional protections required *for such proceedings*. (*Id.* at p. 1021.) Thus, use of reliably obtained juvenile adjudications of past criminal conduct to enhance later adult criminal proceedings does not offend an adult defendant’s constitutional right to a jury trial in adult criminal proceedings. (*Ibid.*)

The *Nguyen* court summed it up this way: “[I]f the [juvenile offender] was not deterred, and thus reoffends as an adult, this recidivism is a highly rational basis for enhancing the sentence for the adult offense. So long as an accused adult is accorded his or her right to a jury trial *in the adult proceeding* as to all facts that influence the maximum permissible sentence, no reason appears why a constitutionally reliable prior adjudication of criminality, obtained pursuant to *all procedural guarantees constitutionally due to the offender in the prior proceeding*—specifically including the

right to proof beyond a reasonable doubt—should not also be among the facts available for that sentencing purpose.” (*Nguyen, supra*, 46 Cal.4th at p. 1023.)

In light of *Nguyen*, we affirm the judgment.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Rivera, J.